

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH  
BENEFITS FUND, PIRELLI ARMSTRONG  
RETIREE MEDICAL BENEFITS TRUST,  
TEAMSTERS HEALTH & WELFARE FUND  
OF PHILADELPHIA AND VICINITY,  
PHILADELPHIA FEDERATION OF  
TEACHERS HEALTH AND WELFARE FUND,  
DISTRICT COUNCIL 37, AFSCME - HEALTH  
& SECURITY PLAN, JUNE SWAN,  
MAUREEN COWIE and BERNARD GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri  
corporation, and McKESSON CORPORATION,  
a Delaware corporation,

Defendants.

Civil Action: 1:05-CV-11148-PBS

Judge Patti B. Saris

[FILED UNDER SEAL]

**DECLARATION OF LORI A. SCHECHTER IN SUPPORT OF MCKESSON  
CORPORATION'S SURREPLY IN OPPOSITION TO CLASS CERTIFICATION**

**[REDACTED VERSION]**

I, Lori A. Schechter, declare as follows:

1. I am a partner in the law firm of Morrison & Foerster and one of the attorneys of record for McKesson Corporation ("McKesson") in this action. I submit this declaration in support of McKesson's memorandum in opposition to class certification.

2. True and correct copies of documents and deposition transcript excerpts produced to McKesson in this action are attached as exhibits to this declaration as follows:

| Tab | Producing Party or Witness Affiliation | Description   |
|-----|--|---|
|     | Blue Cross Blue Shield Montana (TPP)   |   |
| 23  |  | Deposition of Tina Wong dated November 14, 2006   |
|     | Express Scripts, Inc. (PBM)            |   |
| 24A |  | Email exchange between [REDACTED] and E. Conley at Express Scripts, dated April 15, 2002 (ESI-414-00001870-74)                                    |
| 24B |  | E-mail from K. Abe at Express Scripts to T. Wong and R. Arnold at Blue Cross & Blue Shield of Montana, dated April 22, 2002 (ESI-414-00003677-78) |
| 24C |  | Email from [REDACTED] to K. Wuflestad at Express Scripts, dated May 7, 2002 (ESI-414-00003722-28)   |
| 24D |  | Email exchange between [REDACTED] and J. Chase at Express Scripts, dated April 17, 2002 and April 25, 2002 (ESI-414-00003758-59)                  |
| 24E |  | Email from [REDACTED] to S. Crawford at Express Scripts, dated May 14, 2002 (ESI-414-00003785-86)   |
| 24F |  | E-mail from [REDACTED] to E. Conley at Express Scripts, dated April 16, 2002 (ESI-414-00004109)   |

| <b>Tab</b> | <b>Producing Party or Witness Affiliation</b>      | <b>Description</b>   |
|------------|--|--|
|            | <b>Dr. Hartman (Plaintiffs' Expert)</b>            |  |
| <b>25</b>  |  | Deposition of Raymond S. Hartman, dated October 4, 2006 and October 5, 2006  |
|            | <b>Susan Hayes (Plaintiffs' Expert)</b>            |  |
| <b>26</b>  |  | Deposition of Susan Hayes, dated October 26, 2006  |
|            | <b>Hewitt Associates LLC (Benefits Consultant)</b> |  |
| <b>27</b>  |  | Deposition of Matthew Gibbs dated October 27, 2006   |
|            | <b>Johnson &amp; Johnson</b>                       |  |
| <b>28</b>  |  | Email from R. Fair to A. Ianucci, M. Peterson, and M. Wright at [REDACTED], dated May 9, 2002 (MDL-[REDACTED])     |
|            | <b>ProMedica (TPP)</b>                             |  |
| <b>29</b>  |  | E-mail from M. Chen at Express Scripts to N. Karwal at ProMedica, dated February 27, 2007 (PROMEDICA/NEC 00006-8). |

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 7th day of May, 2007, in San Francisco, California.

/s/ Lori A. Schechter  
Lori A. Schechter

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon each other party via overnight mail on May 7, 2007.

/s/ Lori A. Schechter

Lori A. Schechter

# **Exhibit 23**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

 **COPY**

NEW ENGLAND CARPENTERS BENEFITS )  
FUND, et al. )

Plaintiffs, )

) Civil Action

vs. ) No. 1:05-CV-11148-PBS

FIRST DATABANK and MCKESSON )  
CORPORATION, (

Defendants. )

Taken at 404 Fuller Avenue  
Helena, Montana  
Tuesday, November 14, 2006 - 9:15 a.m.

D E P O S I T I O N

OF

TINA WONG

Reported by Mary R. Sullivan, RPR, RMR, Freelance  
Court Reporter and Notary Public, State of Montana,  
residing in Missoula, Montana.

1 benefit changes, different things that we could do to  
2 help lower our pharmacy trend.

3 Q. Do you remember when that financial review  
4 happened or did it happen over a period of time?

5 A. Yeah, it definitely--during, you know, those  
6 two years, yes.

7 Q. Okay. And during that financial review, ESI  
8 noted for you that your trend was higher than normal?

9 A. Well, yes, and I guess slowly, you know, in  
10 the years previous to that it had slowly--I mean, it  
11 had always been increasing, but I guess just in a  
12 more--at an increased rate in those, you know, couple  
13 years.

14 Q. And in reaction to that increased rate, did  
15 Blue Cross/Blue Shield of Montana implement some  
16 changes in order to control costs in the 2000 to 2001  
17 period?

18 A. You know, we discussed a lot of different  
19 options at that time, and did kind of plan for some  
20 clinical programs for the next couple years that we  
21 were going to roll out. We also--I think--I want to  
22 say roughly 2003, I think, we ended up making a--our--  
23 increasing our co-payments on our drugs. So, yeah, I  
24 mean, we definitely thought of some different things  
25 that we could do to help control some of our costs.

1 Kind of steer drugs--or steer members also towards more  
2 generic drugs, because even at that time we were  
3 looking at, you know, trying to increase our generic  
4 utilization.

5 Q. So you started discussing it in the 2002,  
6 2001 time period, but didn't implement it until later.

7 A. Right.

8 Q. Okay. And the clinical programs you were  
9 discussing include the step therapy we were talking  
10 about--

11 A. Yes.

12 Q. --and the prior authorization we were talking  
13 about?

14 A. Correct.

15 Q. The other things that you were discussing  
16 during this time period, you said co-pays, changing  
17 co-pays?

18 A. Uh-huh.

19 Q. Anything else that you discussed during this  
20 time period?

21 A. I think also during that time period was when  
22 we discussed implementing a mandatory generic  
23 program instead of--we had just a restricted generic  
24 program, so we got a little bit more aggressive, you  
25 know, when there was a generic available, then a



1 Blue Cross and Blue Shield of Montana.

2 A. No.

3 Q. Okay. Have you had discussions with anyone  
4 else about the differences between WAC and AWP?

5 A. Yes, and specifically with Mark Eichler, our  
6 pharmacy consultant--

7 Q. Uh-huh.

8 A. --and then my previous deposition two years  
9 ago.

10 Q. Uh-huh. And what did you discuss with Mark  
11 Eichler?

12 A. You know, just trying to, you know, get--this  
13 was, you know, many years ago, but just trying to get  
14 an understanding of, you know, where--what WAC meant  
15 and AWP and just kind of the relationship. It's pretty  
16 much where I got my information from.

17 Q. So your understanding of the difference  
18 between WAC and AWP comes from Mark?

19 A. Yes.

20 Q. And did he tell you anything else about the  
21 relationship between WAC and AWP that we haven't  
22 already discussed?

23 A. No, he didn't.

24 Q. When did you have this discussion with him?

25 A. It--you know, it's--I want to say roughly,

1       you know, 1997, maybe. It's been a long time.

2           Q.    So your understanding of WAC and AWP haven't  
3       changed since then?

4           A.    No, I don't think so.

5           Q.    Why don't we take our lunch break, if that's  
6       okay with you--

7           A.    That's fine.

8           Q.    --since it's almost noon.

9           MS. CHEUNG: Why don't we go off the record.

10          THE VIDEOGRAPHER: Okay. The time is 11:55.  
11       We're off the record.

12                (Whereupon, the deposition was in recess at  
13       11:55 a.m., and subsequently reconvened at 12:34 p.m.,  
14       and the following proceedings were had and entered of  
15       record:)

16          THE VIDEOGRAPHER: We're on the record. The  
17       time is 12:34.

18          Q.    (By Ms. Cheung) Welcome back.

19          A.    Thank you.

20          Q.    Before the break, we were discussing  
21       differences between WAC and AWP, do you remember  
22       that?

23          A.    Yes.

24          Q.    Can you tell me whether Blue Cross/Blue  
25       Shield of Montana has ever looked at pharmacy

C E R T I F I C A T E

STATE OF MONTANA )

: ss.

County of Missoula )

I, Mary Sullivan, Freelance Court Reporter and  
Notary Public for the State of Montana, residing in  
Missoula, Montana, do hereby certify:

That I was duly authorized to and did report  
the deposition of TINA WONG in the above-entitled  
cause;

That the reading and signing of the deposition  
by the witness have been expressly reserved.

That the foregoing pages of this testimony  
constitute a true and accurate transcription of my  
stenotype notes of the testimony of said witness.

I further certify that I am not an attorney  
nor counsel of any of the parties; nor a relative or  
employee of any attorney or counsel connected with the  
action, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my  
hand on this the 21st day of November, 2006.

---

Mary Sullivan, RPR, RMR  
Freelance Court Reporter  
Notary Public, State of Montana  
Residing in Missoula, Montana  
My Commission expires: 4-06-10

# **Exhibit 24A**

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**From:** Conley, Erin (STL)  
**Sent:** Monday, April 15, 2002 12:21 PM  
**To:** [REDACTED]  
**Cc:** Barklage, Sandy (STL)  
**Subject:** FW: FDB\_Impacted\_NDC\_List.xls  
**Attachments:** FDB\_Impacted\_NDC\_List.xls

[REDACTED]

This is the list of drugs that our analysis has shown were increased greater than the corresponding WAC increase. This is a list of those increased through the end of February. We will complete another analysis later if this situation continues to show increasing AWP's relative to WACs. To date the increases should result in an increase in trend to our clients of [REDACTED]. IF these increases are applied to all drugs that currently are WAC +16% (they would be raised to WAC+ 20%) then the trend impact would be in the [REDACTED] range.

Please reserve distribution of this list to only those that truly need this level of detail.



FDB\_Impacted\_NDC\_List.xls (27 ...)

This file includes only the NDCs that had a change in AWP in excess of any change in WAC, December 2001 vs. February 2002. In other words, if both the AWP and WAC moved in tandem, then they were excluded from this list. Our attempt was to capture only those NDCs that had an AWP change influenced by the FDB policy change.

Erin,  
This is "ugly" news! When can we get some "drill-down" specifics per therapeutic category to revise our expense trends and start strategizing management approaches? [REDACTED]

**Tracking:** Recipient  
[REDACTED]  
Barklage, Sandy (STL)

NDC List for NDCs experiencing an unequal change in AWP and WAC  
 (AWP changed in excess of WAC)  
 Source: PriceCheck PC (First Data Bank)

| NDC         | DESCRIPTION             | MANUFACTURER |
|-------------|-------------------------|--------------|
| 00074258611 | BIAXIN TAB 500MG        | ABBOTT       |
| 00074336811 | BIAXIN TAB 250MG        | ABBOTT       |
| 00173033602 | BECONASE NA AER INHALER | ALLEN&HAN    |
| 00173038879 | BECONASE AQ SPR 0.042%  | ALLEN&HAN    |
| 00173045301 | FLONASE SPR 0.05%       | ALLEN&HAN    |
| 00310060412 | NOLVADEX TAB 20MG       | ASTZEN       |
| 00310013410 | ZESTRIL TAB 40MG        | ASTZEN       |
| 00310013510 | ZESTRIL TAB 2.5MG       | ASTZEN       |
| 00310014110 | ZESTORETIC TAB 10/12.5  | ASTZEN       |
| 00310040239 | ACCOLATE TAB 20MG       | ASTZEN       |
| 00310013010 | ZESTRIL TAB 5MG         | ASTZEN       |
| 00310013034 | ZESTRIL TAB 5MG         | ASTZEN       |
| 00310013039 | ZESTRIL TAB 5MG         | ASTZEN       |
| 00310013110 | ZESTRIL TAB 10MG        | ASTZEN       |
| 00310013134 | ZESTRIL TAB 10MG        | ASTZEN       |
| 00310013139 | ZESTRIL TAB 10MG        | ASTZEN       |
| 00310013173 | ZESTRIL TAB 10MG        | ASTZEN       |
| 00310013210 | ZESTRIL TAB 20MG        | ASTZEN       |
| 00310013234 | ZESTRIL TAB 20MG        | ASTZEN       |
| 00310013239 | ZESTRIL TAB 20MG        | ASTZEN       |
| 00310013273 | ZESTRIL TAB 20MG        | ASTZEN       |
| 00310013310 | ZESTRIL TAB 30MG        | ASTZEN       |
| 00310014210 | ZESTORETIC TAB 20-12.5  | ASTZEN       |
| 00310014510 | ZESTORETIC TAB 20-25MG  | ASTZEN       |
| 00310040160 | ACCOLATE TAB 10MG       | ASTZEN       |
| 00310040260 | ACCOLATE TAB 20MG       | ASTZEN       |
| 00310089110 | SULAR TAB 10MG CR       | ASTZEN       |
| 00310089139 | SULAR TAB 10MG CR       | ASTZEN       |
| 00310089210 | SULAR TAB 20MG CR       | ASTZEN       |
| 00310089239 | SULAR TAB 20MG CR       | ASTZEN       |
| 00310089310 | SULAR TAB 30MG CR       | ASTZEN       |
| 00310089339 | SULAR TAB 30MG CR       | ASTZEN       |
| 00310089410 | SULAR TAB 40MG CR       | ASTZEN       |
| 00310070510 | CASODEX TAB 50MG        | ASTZEN       |
| 00310070530 | CASODEX TAB 50MG        | ASTZEN       |
| 00310060060 | NOLVADEX TAB 10MG       | ASTZEN       |
| 00310060430 | NOLVADEX TAB 20MG       | ASTZEN       |
| 00310060018 | NOLVADEX TAB 10MG       | ASTZEN       |
| 00310060075 | NOLVADEX TAB 10MG       | ASTZEN       |
| 00310060490 | NOLVADEX TAB 20MG       | ASTZEN       |
| 00186000131 | LEXXEL TAB 5-5MG        | ASTZEN LP    |
| 00186000231 | LEXXEL TAB 5-2.5MG      | ASTZEN LP    |
| 00186000188 | LEXXEL TAB 5-5MG        | ASTZEN LP    |
| 00186107008 | RHINOCORT SUS AQUA      | ASTZEN LP    |
| 00186107509 | RHINOCORT AER 32MCG     | ASTZEN LP    |
| 00186502031 | NEXIUM CAP 20MG         | ASTZEN LP    |

|             |                  |              |           |
|-------------|------------------|--------------|-----------|
| 00186504031 | NEXIUM           | CAP 40MG     | ASTZEN LP |
| 00186502054 | NEXIUM           | CAP 20MG     | ASTZEN LP |
| 00186502228 | NEXIUM           | CAP 20MG     | ASTZEN LP |
| 00186504054 | NEXIUM           | CAP 40MG     | ASTZEN LP |
| 00186504228 | NEXIUM           | CAP 40MG     | ASTZEN LP |
| 00186074231 | PRILOSEC         | CAP 20MG CR  | ASTZEN LP |
| 00186060628 | PRILOSEC         | CAP 10MG CR  | ASTZEN LP |
| 00186060668 | PRILOSEC         | CAP 10MG CR  | ASTZEN LP |
| 00186060682 | PRILOSEC         | CAP 10MG CR  | ASTZEN LP |
| 00186074228 | PRILOSEC         | CAP 20MG CR  | ASTZEN LP |
| 00186074282 | PRILOSEC         | CAP 20MG CR  | ASTZEN LP |
| 00186074328 | PRILOSEC         | CAP 40MG CR  | ASTZEN LP |
| 00186074331 | PRILOSEC         | CAP 40MG CR  | ASTZEN LP |
| 00186074368 | PRILOSEC         | CAP 40MG CR  | ASTZEN LP |
| 00186074382 | PRILOSEC         | CAP 40MG CR  | ASTZEN LP |
| 00186060631 | PRILOSEC         | CAP 10MG CR  | ASTZEN LP |
| 00075150543 | NASACORT         | AER 55MCG/AC | AVENTIS   |
| 00026286151 | PRECOSE          | TAB 50MG     | BAYER PHA |
| 00026286148 | PRECOSE          | TAB 50MG     | BAYER PHA |
| 00026851248 | CIPRO            | TAB 250MG    | BAYER PHA |
| 00026851251 | CIPRO            | TAB 250MG    | BAYER PHA |
| 00026851348 | CIPRO            | TAB 500MG    | BAYER PHA |
| 00026851351 | CIPRO            | TAB 500MG    | BAYER PHA |
| 00026851448 | CIPRO            | TAB 750MG    | BAYER PHA |
| 00026855136 | CIPRO            | SUS 5G/100ML | BAYER PHA |
| 00026286251 | PRECOSE          | TAB 100MG    | BAYER PHA |
| 00026851450 | CIPRO            | TAB 750MG    | BAYER PHA |
| 00026855336 | CIPRO            | SUS 10GM/100 | BAYER PHA |
| 00026286351 | PRECOSE          | TAB 25MG     | BAYER PHA |
| 00026851108 | CIPRO CYSTIT     | TAB 100MG    | BAYER PHA |
| 00087015846 | MONOPRIL         | TAB 10MG     | BMS-PC    |
| 00087015885 | MONOPRIL         | TAB 10MG     | BMS-PC    |
| 00087060942 | MONOPRIL         | TAB 20MG     | BMS-PC    |
| 00087080945 | MONOPRIL         | TAB 20MG     | BMS-PC    |
| 00087060985 | MONOPRIL         | TAB 20MG     | BMS-PC    |
| 00087120213 | MONOPRIL         | TAB 40MG     | BMS-PC    |
| 00087149201 | MONOPRIL HCT     | TAB 10/12.5  | BMS-PC    |
| 24208027509 | OPTIPRANOLOL SOL | 0.3% OP      | BSCH & LM |
| 00173045003 | IMITREX          | TAB 100MG    | CERENEX   |
| 00173045900 | IMITREX          | TAB 50MG     | CERENEX   |
| 00173040106 | ACLOVATE         | CRE 0.05%    | ELAN PHAR |
| 00173040208 | ACLOVATE         | OIN 0.05%    | ELAN PHAR |
| 00173040100 | ACLOVATE         | CRE 0.05%    | ELAN PHAR |
| 00173040200 | ACLOVATE         | OIN 0.05%    | ELAN PHAR |
| 00173040101 | ACLOVATE         | CRE 0.05%    | ELAN PHAR |
| 00173040201 | ACLOVATE         | OIN 0.05%    | ELAN PHAR |
| 50242002608 | NUTROPIN AQ      | INJ 5MG/ML   | GENENTECH |
| 50242003235 | NUTROPIN         | KIT DEPOT    | GENENTECH |
| 50242003249 | NUTROPIN         | INJ 5MG      | GENENTECH |
| 50242003441 | NUTROPIN         | KIT DEPOT    | GENENTECH |
| 50242003450 | NUTROPIN         | INJ 10MG     | GENENTECH |

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|             |                         |           |
|-------------|-------------------------|-----------|
| 50242003654 | NUTROPIN KIT DEPOT      | GENENTECH |
| 00173056502 | VALTREX TAB 1GM         | GLAXOSMIT |
| 00173093303 | VALTREX TAB 500MG       | GLAXOSMIT |
| 00173093356 | VALTREX TAB 500MG       | GLAXOSMIT |
| 00173013555 | WELLBUTRIN TAB 150MG SR | GLAXOSMIT |
| 00173094755 | WELLBUTRIN TAB 100MG SR | GLAXOSMIT |
| 00173069500 | ADVAIR DISKU MIS 100/50 | GLAXOSMIT |
| 00173069502 | ADVAIR DISKU MIS 100/50 | GLAXOSMIT |
| 00173069602 | ADVAIR DISKU MIS 250/50 | GLAXOSMIT |
| 00173069700 | ADVAIR DISKU MIS 500/50 | GLAXOSMIT |
| 00173069702 | ADVAIR DISKU MIS 500/50 | GLAXOSMIT |
| 00173089600 | ADVAIR DISKU MIS 250/50 | GLAXOSMIT |
| 00083006230 | TEGRETOL XR TAB 200MG   | NOVARTIS  |
| 00083006030 | TEGRETOL XR TAB 400MG   | NOVARTIS  |
| 00083006130 | TEGRETOL XR TAB 100MG   | NOVARTIS  |
| 00078017915 | LAMISIL TAB 250MG       | NOVARTIS  |
| 00078017905 | LAMISIL TAB 250MG       | NOVARTIS  |
| 00078035105 | STARLIX TAB 60MG        | NOVARTIS  |
| 00078035205 | STARLIX TAB 120MG       | NOVARTIS  |
| 00149047101 | ACTONEL TAB 5MG         | P&G PHARM |
| 00149047001 | ACTONEL TAB 30MG        | P&G PHARM |
| 00149047103 | ACTONEL TAB 5MG         | P&G PHARM |
| 00149075202 | ASACOL TAB 400MG EC     | P&G PHARM |
| 00149040560 | DIDRONEL TAB 200MG      | P&G PHARM |
| 00149040660 | DIDRONEL TAB 400MG      | P&G PHARM |
| 00149071001 | MACROBID CAP 100MG      | P&G PHARM |
| 00071014423 | FEMHRT 1/5 TAB          | PFIZER US |
| 00071014445 | FEMHRT 1/5 TAB          | PFIZER US |
| 00071015523 | LIPITOR TAB 10MG        | PFIZER US |
| 00071022006 | ACCURETIC TAB 20/12.5   | PFIZER US |
| 00071022206 | ACCURETIC TAB 10/12.5   | PFIZER US |
| 00071022306 | ACCURETIC TAB 20/25MG   | PFIZER US |
| 00071080340 | NEURONTIN CAP 100MG     | PFIZER US |
| 00071080540 | NEURONTIN CAP 300MG     | PFIZER US |
| 00071041624 | NEURONTIN TAB 600MG     | PFIZER US |
| 00071042624 | NEURONTIN TAB 800MG     | PFIZER US |
| 00071052723 | ACCUPRIL TAB 5MG        | PFIZER US |
| 00071052740 | ACCUPRIL TAB 5MG        | PFIZER US |
| 00071053023 | ACCUPRIL TAB 10MG       | PFIZER US |
| 00071053040 | ACCUPRIL TAB 10MG       | PFIZER US |
| 00071053223 | ACCUPRIL TAB 20MG       | PFIZER US |
| 00071053240 | ACCUPRIL TAB 20MG       | PFIZER US |
| 00071053523 | ACCUPRIL TAB 40MG       | PFIZER US |
| 00071080524 | NEURONTIN CAP 300MG     | PFIZER US |
| 00071015623 | LIPITOR TAB 20MG        | PFIZER US |
| 00071015640 | LIPITOR TAB 20MG        | PFIZER US |
| 00071080624 | NEURONTIN CAP 400MG     | PFIZER US |
| 00071080640 | NEURONTIN CAP 400MG     | PFIZER US |
| 00071080324 | NEURONTIN CAP 100MG     | PFIZER US |
| 00071015723 | LIPITOR TAB 40MG        | PFIZER US |
| 00071015823 | LIPITOR TAB 80MG        | PFIZER US |

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ESI-414-00001873



|             |                        |           |
|-------------|------------------------|-----------|
| 00071091348 | LOESTRIN FE TAB 1/20   | PFIZER US |
| 00071091548 | LOESTRIN TAB 1/20-21   | PFIZER US |
| 00071091648 | LOESTRIN 21 TAB 1.5/30 | PFIZER US |
| 00071091745 | LOESTRIN FE TAB 1.5/30 | PFIZER US |
| 00071091748 | LOESTRIN FE TAB 1.5/30 | PFIZER US |
| 00071092815 | ESTROSTEP FE TAB       | PFIZER US |
| 00071092847 | ESTROSTEP FE TAB       | PFIZER US |
| 00029152611 | BACTROBAN OIN NASAL 2% | SK BEECHA |
| 00032170801 | PROMETRIUM CAP 100MG   | SOLVAY    |
| 00300154111 | PREVACID CAP 15MG DR   | TAP       |
| 00300154119 | PREVACID CAP 15MG DR   | TAP       |
| 00300304611 | PREVACID CAP 30MG DR   | TAP       |
| 00300304613 | PREVACID CAP 30MG DR   | TAP       |
| 00300304619 | PREVACID CAP 30MG DR   | TAP       |
| 00300154130 | PREVACID CAP 15MG DR   | TAP       |
| 00300370201 | PREVPAC MIS            | TAP       |
| 00072140050 | ULTRAVATE CRE 0.05%    | WEST-SQUI |
| 00072145050 | ULTRAVATE OIN 0.05%    | WEST-SQUI |
| 00072571208 | LAC-HYDRIN LOT 12%     | WEST-SQUI |
| 00072026006 | DOVONEX CRE 0.005%     | WEST-SQUI |
| 00072026012 | DOVONEX CRE 0.005%     | WEST-SQUI |
| 00072140015 | ULTRAVATE CRE 0.05%    | WEST-SQUI |
| 00072145015 | ULTRAVATE OIN 0.05%    | WEST-SQUI |
| 00072254006 | DOVONEX OIN 0.005%     | WEST-SQUI |
| 00072254012 | DOVONEX OIN 0.005%     | WEST-SQUI |
| 00072573028 | LAC-HYDRIN CRE 12%     | WEST-SQUI |
| 00072573038 | LAC-HYDRIN CRE 12%     | WEST-SQUI |
| 00072116006 | DOVONEX SOL 0.005%     | WEST-SQUI |
| 00072571214 | LAC-HYDRIN LOT 12%     | WEST-SQUI |

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ES-414-00001874

# **Exhibit 24B**

---

**From:** Abe, Karen (BLM)  
**Sent:** Monday, April 22, 2002 3:02 PM  
**To:** 'Tina Wong'; 'Roy Arnold, MD'  
**Cc:** O'Brien, Julie (BLM)  
**Subject:** AWP Info

**Attachments:** AWP increase BMT.doc



AWP increase  
BMT.doc (25 KB)

*Karen L. Abe, RPh, MBA  
Clinical Program Manager  
Express-Scripts, Inc  
kabe1@express-scripts.com  
PH: (360) 848-0680  
FAX: (360) 848-0664*

**URGENT! EMERGING THERAPEUTIC ISSUES COMMUNICATION**

April 22, 2002

Tina Wong, Pharmacy Coordinator  
Dr. Roy Arnold, Sr. VP  
Blue Cross Blue Shield of Montana

Dear Tina and Dr. Arnold:

**RE: Average Wholesale Price Increases**

Pharmaceutical manufacturers make price changes throughout the year. As we have documented in Express Scripts' annual *Drug Trend Report*, for the last four years the average increase in Average Wholesale Price ("AWP") has exceeded 5%. The first wave of price increases typically take place in the January through February timeframe. Over the last couple of years these increases have averaged 1 to 1.5%. This year, however, the increase for this period January through February timeframe is closer to 2.5%. The increase for this period also includes an adjustment to increase the difference between wholesale acquisition cost (WAC) and AWP for certain drugs. In other words a little less than half of the total increase is due to AWP increases that are in excess of the corresponding increase in WAC.

Upon our inquiry to our pricing service, First Data Bank (the industry's primary source for AWP information), the recent AWP adjustments were made to establish a more consistent relationship with WAC. As this trend indicates, it is more important now than ever to put cost management strategies in place.

Sincerely,

Karen L. Abe, Clinical Program Manager  
(360) 848-0680

cc: Julie Obrien

# **Exhibit 24C**

**From:** [REDACTED]  
**Sent:** Tuesday, May 07, 2002 3:29 PM  
**To:** Wuflestad, Kent M. R.Ph. (ESI)  
**Cc:** Vargo, Harry (ESI); Becker, Kim R.Ph. (ESI)  
**Subject:** FW: First DataBank AWP Increases

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Attachments:** AWP Increases Memo.doc; FDB\_Impacted\_NDC\_List.xls



AWP Increases Memo.doc (23 KB)...



FDB\_Impacted\_NDC\_List.xls (23 KB)...

Kent:

Thanks for making yourself available in such short notice for our discussion on First DataBank AWP increases. We look forward to your assistance on calculating [REDACTED] specific trend impact due to this change as well as any update on this item.

[REDACTED]

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-----Original Message-----

**From:** Wuflestad, Kent (BLM) [SMTP:kent.wuflestad@express-scripts.com]  
**Sent:** Wednesday, April 17, 2002 11:17 AM  
**To:** [REDACTED]  
**Cc:** Becker, Kim (BLM); Vargo, Harry (BLM)  
**Subject:** First DataBank AWP Increases

Hi [REDACTED]

In follow-up to our conversation last week, I'm sending two attachments with information on the First Data Bank AWP changes.

- > The first attachment explains a change that has occurred in First Data
- > Bank's approach to establishing AWP pricing for claims processing. The
- > second attachment includes a listing of drugs that have been impacted by
- > the FDB changes so far.
- >
- > In a nutshell, First Data Bank provides ESI with information we use to

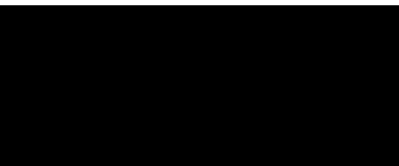
- > process claims, such as NDC number, package size, AWP price, etc.
- > Recently, FDB has begun to standardize their AWP calculation process
- > across all manufacturers, which has resulted in an increase in AWP prices.
- > The AWP changes that have occurred to date have resulted in an increase in
- > trend of [REDACTED] IF these AWP changes are applied to all drugs that
- > have AWP's equal to WAC + 16% (they would be raised to WAC + 20%), the
- > trend impact would be expected to be in the [REDACTED] range.
- >

If you have any further questions, please don't hesitate to call me.

- > Kent
- > <<AWP Increases Memo.doc>> <<FDB\_Impacted\_NDC\_List.xls>>
- >
- >
- >
- > <<AWP Increases Memo.doc>> <<FDB\_Impacted\_NDC\_List.xls>>

**URGENT: EMERGING THERAPEUTIC ISSUES COMMUNICATION**

Date: April 15, 2002



Dear [REDACTED]

**RE: Average Wholesale Price Increases**

Pharmaceutical manufacturers make price changes throughout the year. As we have documented in Express Scripts' annual *Drug Trend Report*, for the last four years the average increase in Average Wholesale Price ("AWP") has exceeded 5%. The first wave of price increases typically take place in the January through February timeframe. Over the last couple of years these increases have averaged 1 to 1.5%. This year, however, the increase for this period January through February timeframe is closer to 2.5%. The increase for this period also includes an adjustment to increase the difference between wholesale acquisition cost (WAC) and AWP for certain drugs. In other words a little less than half of the total increase is due to AWP increases that are in excess of the corresponding increase in WAC.

Upon our inquiry to our pricing service, First Data Bank (the industry's primary source for AWP information), the recent AWP adjustments were made to establish a more consistent relationship with WAC. As this trend indicates, it is more important now than ever to put cost management strategies in place.

If we can answer any questions, or if you are interested in the Emerging Therapeutic Issues program and are currently not enrolled, please contact me at your convenience.

Sincerely,

Kent Wuflestad, R.Ph.  
Director, Clinical Program Management  
952-837-5334

C: [REDACTED]

Stephanie Anderson, Melisse Stenzel-Torres – Express Scripts



NDC List for NDCs experiencing an unequal change in AWP and WAC  
(AWP changed in excess of WAC)  
Source: PriceCheck PC (First Data Bank)

| NDC         | Product Name            | Manufacturer |
|-------------|-------------------------|--------------|
| 00074258611 | BIAXIN TAB 500MG        | ABBOTT       |
| 00074336811 | BIAXIN TAB 250MG        | ABBOTT       |
| 00173033602 | BECONASE NA AER INHALER | ALLEN&HAN    |
| 00173038879 | BECONASE AQ SPR 0.042%  | ALLEN&HAN    |
| 00173045301 | FLONASE SPR 0.05%       | ALLEN&HAN    |
| 00310060412 | NOLVADEX TAB 20MG       | ASTZEN       |
| 00310013410 | ZESTRIL TAB 40MG        | ASTZEN       |
| 00310013510 | ZESTRIL TAB 2.5MG       | ASTZEN       |
| 00310014110 | ZESTORETIC TAB 10/12.5  | ASTZEN       |
| 00310040239 | ACCOLATE TAB 20MG       | ASTZEN       |
| 00310013010 | ZESTRIL TAB 5MG         | ASTZEN       |
| 00310013034 | ZESTRIL TAB 5MG         | ASTZEN       |
| 00310013039 | ZESTRIL TAB 5MG         | ASTZEN       |
| 00310013110 | ZESTRIL TAB 10MG        | ASTZEN       |
| 00310013134 | ZESTRIL TAB 10MG        | ASTZEN       |
| 00310013139 | ZESTRIL TAB 10MG        | ASTZEN       |
| 00310013173 | ZESTRIL TAB 10MG        | ASTZEN       |
| 00310013210 | ZESTRIL TAB 20MG        | ASTZEN       |
| 00310013234 | ZESTRIL TAB 20MG        | ASTZEN       |
| 00310013239 | ZESTRIL TAB 20MG        | ASTZEN       |
| 00310013273 | ZESTRIL TAB 20MG        | ASTZEN       |
| 00310013310 | ZESTRIL TAB 30MG        | ASTZEN       |
| 00310014210 | ZESTORETIC TAB 20-12.5  | ASTZEN       |
| 00310014510 | ZESTORETIC TAB 20-25MG  | ASTZEN       |
| 00310040160 | ACCOLATE TAB 10MG       | ASTZEN       |
| 00310040260 | ACCOLATE TAB 20MG       | ASTZEN       |
| 00310089110 | SULAR TAB 10MG CR       | ASTZEN       |
| 00310089139 | SULAR TAB 10MG CR       | ASTZEN       |
| 00310089210 | SULAR TAB 20MG CR       | ASTZEN       |
| 00310089239 | SULAR TAB 20MG CR       | ASTZEN       |
| 00310089310 | SULAR TAB 30MG CR       | ASTZEN       |
| 00310089339 | SULAR TAB 30MG CR       | ASTZEN       |
| 00310089410 | SULAR TAB 40MG CR       | ASTZEN       |
| 00310070510 | CASODEX TAB 50MG        | ASTZEN       |
| 00310070530 | CASODEX TAB 50MG        | ASTZEN       |
| 00310060060 | NOLVADEX TAB 10MG       | ASTZEN       |
| 00310060430 | NOLVADEX TAB 20MG       | ASTZEN       |
| 00310060018 | NOLVADEX TAB 10MG       | ASTZEN       |
| 00310060075 | NOLVADEX TAB 10MG       | ASTZEN       |
| 00310060490 | NOLVADEX TAB 20MG       | ASTZEN       |
| 00186000131 | LEXXEL TAB 5-5MG        | ASTZEN LP    |
| 00186000231 | LEXXEL TAB 5-2.5MG      | ASTZEN LP    |
| 00186000168 | LEXXEL TAB 5-5MG        | ASTZEN LP    |
| 00186107008 | RHINOCORT SUS AQUA      | ASTZEN LP    |
| 00186107509 | RHINOCORT AER 32MCG     | ASTZEN LP    |
| 00186502031 | NEXIUM CAP 20MG         | ASTZEN LP    |

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|             |              |              |           |
|-------------|--------------|--------------|-----------|
| 00186504031 | NEXIUM       | CAP 40MG     | ASTZEN LP |
| 00186502054 | NEXIUM       | CAP 20MG     | ASTZEN LP |
| 00186502228 | NEXIUM       | CAP 20MG     | ASTZEN LP |
| 00186504054 | NEXIUM       | CAP 40MG     | ASTZEN LP |
| 00186504228 | NEXIUM       | CAP 40MG     | ASTZEN LP |
| 00186074231 | PRILOSEC     | CAP 20MG CR  | ASTZEN LP |
| 00186060628 | PRILOSEC     | CAP 10MG CR  | ASTZEN LP |
| 00186060668 | PRILOSEC     | CAP 10MG CR  | ASTZEN LP |
| 00186060682 | PRILOSEC     | CAP 10MG CR  | ASTZEN LP |
| 00186074228 | PRILOSEC     | CAP 20MG CR  | ASTZEN LP |
| 00186074282 | PRILOSEC     | CAP 20MG CR  | ASTZEN LP |
| 00186074328 | PRILOSEC     | CAP 40MG CR  | ASTZEN LP |
| 00186074331 | PRILOSEC     | CAP 40MG CR  | ASTZEN LP |
| 00186074368 | PRILOSEC     | CAP 40MG CR  | ASTZEN LP |
| 00186074382 | PRILOSEC     | CAP 40MG CR  | ASTZEN LP |
| 00186060631 | PRILOSEC     | CAP 10MG CR  | ASTZEN LP |
| 00075150543 | NASACORT     | AER 55MCG/AC | AVENTIS   |
| 00026286151 | PRECOSE      | TAB 50MG     | BAYER PHA |
| 00026286148 | PRECOSE      | TAB 50MG     | BAYER PHA |
| 00026851248 | CIPRO        | TAB 250MG    | BAYER PHA |
| 00026851251 | CIPRO        | TAB 250MG    | BAYER PHA |
| 00026851348 | CIPRO        | TAB 500MG    | BAYER PHA |
| 00026851351 | CIPRO        | TAB 500MG    | BAYER PHA |
| 00026851448 | CIPRO        | TAB 750MG    | BAYER PHA |
| 00026855136 | CIPRO        | SUS 5G/100ML | BAYER PHA |
| 00026286251 | PRECOSE      | TAB 100MG    | BAYER PHA |
| 00026851450 | CIPRO        | TAB 750MG    | BAYER PHA |
| 00026855336 | CIPRO        | SUS 10GM/100 | BAYER PHA |
| 00026286351 | PRECOSE      | TAB 25MG     | BAYER PHA |
| 00026851106 | CIPRO CYSTIT | TAB 100MG    | BAYER PHA |
| 00087015846 | MONOPRIL     | TAB 10MG     | BMS-PC    |
| 00087015885 | MONOPRIL     | TAB 10MG     | BMS-PC    |
| 00087060942 | MONOPRIL     | TAB 20MG     | BMS-PC    |
| 00087060945 | MONOPRIL     | TAB 20MG     | BMS-PC    |
| 00087060985 | MONOPRIL     | TAB 20MG     | BMS-PC    |
| 00087120213 | MONOPRIL     | TAB 40MG     | BMS-PC    |
| 00087149201 | MONOPRIL HCT | TAB 10/12.5  | BMS-PC    |
| 24208027509 | OPTIPRANOLOL | SOL 0.3% OP  | BSCH & LM |
| 00173045003 | IMITREX      | TAB 100MG    | CERENEX   |
| 00173045900 | IMITREX      | TAB 50MG     | CERENEX   |
| 00173040106 | ACLOVATE     | CRE 0.05%    | ELAN PHAR |
| 00173040206 | ACLOVATE     | OIN 0.05%    | ELAN PHAR |
| 00173040100 | ACLOVATE     | CRE 0.05%    | ELAN PHAR |
| 00173040200 | ACLOVATE     | OIN 0.05%    | ELAN PHAR |
| 00173040101 | ACLOVATE     | CRE 0.05%    | ELAN PHAR |
| 00173040201 | ACLOVATE     | OIN 0.05%    | ELAN PHAR |
| 50242002608 | NUTROPIN AQ  | INJ 5MG/ML   | GENENTECH |
| 50242003235 | NUTROPIN     | KIT DEPOT    | GENENTECH |
| 50242003249 | NUTROPIN     | INJ 5MG      | GENENTECH |
| 50242003441 | NUTROPIN     | KIT DEPOT    | GENENTECH |
| 50242003450 | NUTROPIN     | INJ 10MG     | GENENTECH |

|             |                         |           |
|-------------|-------------------------|-----------|
| 50242003654 | NUTROPIN KIT DEPOT      | GENENTECH |
| 00173056502 | VALTREX TAB 1GM         | GLAXOSMIT |
| 00173093303 | VALTREX TAB 500MG       | GLAXOSMIT |
| 00173093356 | VALTREX TAB 500MG       | GLAXOSMIT |
| 00173013555 | WELLBUTRIN TAB 150MG SR | GLAXOSMIT |
| 00173094755 | WELLBUTRIN TAB 100MG SR | GLAXOSMIT |
| 00173069500 | ADVAIR DISKU MIS 100/50 | GLAXOSMIT |
| 00173069502 | ADVAIR DISKU MIS 100/50 | GLAXOSMIT |
| 00173069602 | ADVAIR DISKU MIS 250/50 | GLAXOSMIT |
| 00173069700 | ADVAIR DISKU MIS 500/50 | GLAXOSMIT |
| 00173069702 | ADVAIR DISKU MIS 500/50 | GLAXOSMIT |
| 00173069600 | ADVAIR DISKU MIS 250/50 | GLAXOSMIT |
| 00083006230 | TEGRETOL XR TAB 200MG   | NOVARTIS  |
| 00083006030 | TEGRETOL XR TAB 400MG   | NOVARTIS  |
| 00083006130 | TEGRETOL XR TAB 100MG   | NOVARTIS  |
| 00078017915 | LAMISIL TAB 250MG       | NOVARTIS  |
| 00078017905 | LAMISIL TAB 250MG       | NOVARTIS  |
| 00078035105 | STARLIX TAB 60MG        | NOVARTIS  |
| 00078035205 | STARLIX TAB 120MG       | NOVARTIS  |
| 00149047101 | ACTONEL TAB 5MG         | P&G PHARM |
| 00149047001 | ACTONEL TAB 30MG        | P&G PHARM |
| 00149047103 | ACTONEL TAB 5MG         | P&G PHARM |
| 00149075202 | ASACOL TAB 400MG EC     | P&G PHARM |
| 00149040560 | DIDRONEL TAB 200MG      | P&G PHARM |
| 00149040660 | DIDRONEL TAB 400MG      | P&G PHARM |
| 00149071001 | MACROBID CAP 100MG      | P&G PHARM |
| 00071014423 | FEMHRT 1/5 TAB          | PFIZER US |
| 00071014445 | FEMHRT 1/5 TAB          | PFIZER US |
| 00071015523 | LIPITOR TAB 10MG        | PFIZER US |
| 00071022006 | ACCURETIC TAB 20/12.5   | PFIZER US |
| 00071022206 | ACCURETIC TAB 10/12.5   | PFIZER US |
| 00071022306 | ACCURETIC TAB 20/25MG   | PFIZER US |
| 00071080340 | NEURONTIN CAP 100MG     | PFIZER US |
| 00071080540 | NEURONTIN CAP 300MG     | PFIZER US |
| 00071041624 | NEURONTIN TAB 600MG     | PFIZER US |
| 00071042624 | NEURONTIN TAB 800MG     | PFIZER US |
| 00071052723 | ACCUPRIL TAB 5MG        | PFIZER US |
| 00071052740 | ACCUPRIL TAB 5MG        | PFIZER US |
| 00071053023 | ACCUPRIL TAB 10MG       | PFIZER US |
| 00071053040 | ACCUPRIL TAB 10MG       | PFIZER US |
| 00071053223 | ACCUPRIL TAB 20MG       | PFIZER US |
| 00071053240 | ACCUPRIL TAB 20MG       | PFIZER US |
| 00071053523 | ACCUPRIL TAB 40MG       | PFIZER US |
| 00071080524 | NEURONTIN CAP 300MG     | PFIZER US |
| 00071015623 | LIPITOR TAB 20MG        | PFIZER US |
| 00071015640 | LIPITOR TAB 20MG        | PFIZER US |
| 00071080624 | NEURONTIN CAP 400MG     | PFIZER US |
| 00071080640 | NEURONTIN CAP 400MG     | PFIZER US |
| 00071080324 | NEURONTIN CAP 100MG     | PFIZER US |
| 00071015723 | LIPITOR TAB 40MG        | PFIZER US |
| 00071015823 | LIPITOR TAB 80MG        | PFIZER US |

|             |                        |           |
|-------------|------------------------|-----------|
| 00071091348 | LOESTRIN FE TAB 1/20   | PFIZER US |
| 00071091548 | LOESTRIN TAB 1/20-21   | PFIZER US |
| 00071091648 | LOESTRIN 21 TAB 1.5/30 | PFIZER US |
| 00071091745 | LOESTRIN FE TAB 1.5/30 | PFIZER US |
| 00071091748 | LOESTRIN FE TAB 1.5/30 | PFIZER US |
| 00071092815 | ESTROSTEP FE TAB       | PFIZER US |
| 00071092847 | ESTROSTEP FE TAB       | PFIZER US |
| 00029152611 | BACTROBAN OIN NASAL 2% | SK BEECHA |
| 00032170801 | PROMETRIUM CAP 100MG   | SOLVAY    |
| 00300154111 | PREVACID CAP 15MG DR   | TAP       |
| 00300154119 | PREVACID CAP 15MG DR   | TAP       |
| 00300304611 | PREVACID CAP 30MG DR   | TAP       |
| 00300304613 | PREVACID CAP 30MG DR   | TAP       |
| 00300304619 | PREVACID CAP 30MG DR   | TAP       |
| 00300154130 | PREVACID CAP 15MG DR   | TAP       |
| 00300370201 | PREVPAC MIS            | TAP       |
| 00072140050 | ULTRAVATE CRE 0.05%    | WEST-SQUI |
| 00072145050 | ULTRAVATE OIN 0.05%    | WEST-SQUI |
| 00072571208 | LAC-HYDRIN LOT 12%     | WEST-SQUI |
| 00072026006 | DOVONEX CRE 0.005%     | WEST-SQUI |
| 00072026012 | DOVONEX CRE 0.005%     | WEST-SQUI |
| 00072140015 | ULTRAVATE CRE 0.05%    | WEST-SQUI |
| 00072145015 | ULTRAVATE OIN 0.05%    | WEST-SQUI |
| 00072254006 | DOVONEX OIN 0.005%     | WEST-SQUI |
| 00072254012 | DOVONEX OIN 0.005%     | WEST-SQUI |
| 00072573028 | LAC-HYDRIN CRE 12%     | WEST-SQUI |
| 00072573038 | LAC-HYDRIN CRE 12%     | WEST-SQUI |
| 00072116006 | DOVONEX SOL 0.005%     | WEST-SQUI |
| 00072571214 | LAC-HYDRIN LOT 12%     | WEST-SQUI |

# **Exhibit 24D**

To: [REDACTED]  
Cc: [REDACTED]  
Subject: RE: FDB AWP Increases

[REDACTED]  
It isn't clear yet what the rebate advantage will be of increasing your copayments so there is a \$20.00 differential. When ESI sent out contracting information to our manufacturers to assist them with their 2003 contracts, we added an additional option that we think a lot of manufacturers will find attractive. [REDACTED]

[REDACTED] We anticipate a lot of uptake on this.

-----Original Message-----

From: [REDACTED]  
Sent: Thursday, April 25, 2002 9:30 AM  
To: 'jennifer.chase@express-scripts.com'  
Subject: FW: FDB AWP Increases

Hi Jenny,

Welcome back.  
Please review [REDACTED] questions and additionally what manufacturer programs are there available that we may be able to take advantage of if [REDACTED] should decide to increase the differential between our co-payments?

Thanks,

[REDACTED]  
-----Original Message-----

From: [REDACTED]  
Sent: Wednesday, April 17, 2002 2:40 PM  
To: [REDACTED]  
Subject: FW: FDB AWP Increases

Please make this a topic of discussion for your monthly call. Will specific step programs help? Will Generics also rise due to these increases? Advise!

[REDACTED]  
-----Original Message-----

From: Chase, Jennifer (BLM) [mailto:jennifer.chase@express-scripts.com]  
Sent: Saturday, April 13, 2002 1:22 PM  
To: [REDACTED]  
Cc: [REDACTED]; Grochal, Janice (BLM)  
Subject: FW: FDB AWP Increases

> Give me a call if you wish to discuss.  
> JC  
> <<AWP increase.doc>>  
>  
>  
> Jennifer Chase, Pharm.D.  
> Managed Care Division  
> 952.837.7784  
> jennifer.chase@express-scripts.com

>  
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# **Exhibit 24E**



**From:** [REDACTED]  
**Sent:** Tuesday, May 14, 2002 4:45 PM  
**To:** 'Crawford, Sue (BLM)'  
**Subject:** RE: AWP increases from FDB

Hi Sue-

Sorry it took so long to get back to you. I spoke with Tim and it would be good to get the AWP model you discussed. It may be too late for Q4, but this will come in handy as they look to Q1 of next year if we can't make use of it now.

Your new number for ingredient cost is much closer to what we came up with (we were [REDACTED] so we are only [REDACTED] off or so). I am going to ask my folks to take another look at how they pulled this to make sure there is no "noise", but I think we are close enough to be comfortable. Unless anything comes to our attention that would cause another look at the reconciliation (I'm still waiting for the AWP info., but the member split makes me comfortable with the figures you had), my sense is that we just work toward a payback of [REDACTED]. Since we took the prospective adjustment approach, we will just have to make sure we take this into consideration if we change the discount in the next few months once we get a better sense as to how 2002 is shaping up.

Thanks for the update on the insured / ASC mix. I only used the numbers Matt provided to let the group here know that we were not seeing any significant swings from what we expected (i.e. somewhere around [REDACTED]).

Let's plan for 12:00 my time tomorrow. Feel free to call my number.

Thanks,

[REDACTED]

-----Original Message-----

**From:** Crawford, Sue (BLM) [mailto:sue.m.crawford@express-scripts.com]  
**Sent:** Monday, May 13, 2002 2:15 PM  
**To:** [REDACTED]  
**Subject:** AWP increases from FDB

Mark - I spoke with people in my department to see if there was any updated information regarding the FDB increases to the AWP. I was told that the increase to expect is still in the [REDACTED] range. I did find out however that St. Louis has built a model to look at the drugs in question on a client specific basis to get a more precise estimate of the impact. Would this be beneficial for the 4q pricing meeting or is it too late? Let me know and I will request that St. Louis run the model for [REDACTED].

I also looked into the reconciliation numbers for total ingredient costs, all lines of business, that you were questioning on the reconciliation exhibit. I did find a problem on my end. The number that I reported was the billed ingredient costs + dispensing fees plus any applicable taxes. This is incorrect. Only the actual ingredient cost should be adjusted to reflect the "earned discounted amount" (although technically one could argue that the tax could be overstated if it was calculated on the higher adjudicated amounts). Anyway, the resulting variance in the settlement is right at [REDACTED] for the [REDACTED] contract term. I can't really explain what happened other than when we in UW/Finance talk about "ingredient cost", we typically add in the dispensing fees. I checked to see what was done at the last reconciliation and we only adjusted the calculated costs which makes sense.

The dispensing fees always remain a constant in the pricing. The correct ingredient cost for all lines of business should have been [REDACTED]. Is this number more in line with what you are looking at on your end? If so, we'll have to talk about how this needs to be addressed.

Finally, the percentage of insured to self-insured business based on AWP retail brand spend that Matt reported to you was overstated. Through February, the number is actually [REDACTED] vs. Matt's number of [REDACTED]. He looked at generic spend in error. The files for March are running now so I can update this calculation as soon as I get them if you'd like.

Susan Crawford  
Regional Finance Manager  
Managed Care Division

Email: sue.m.crawford@express-scripts.com  
Phone: 952.837.5119  
Fax: 952.837.7161

# **Exhibit 24F**

**From:** Orvis, Traci (BLM)  
**To:** Tuesday, April 16, 2002 3:57 PM  
**Subject:** Judy A. Myers (E-mail); Susan Feliciano (E-mail)  
FW: Emerging Therapeutic Issues - AWP PRICE INCREASES

fyi..

-----Original Message-----

**From:** [REDACTED]  
**Sent:** Tuesday, April 16, 2002 3:56 PM  
**To:** 'Conley, Erin (STL)'  
**Cc:** Zopfi, Arnie (BLM); Orvis, Traci (BLM); [REDACTED]  
**Subject:** RE: Emerging Therapeutic Issues - AWP PRICE INCREASES

Erin,  
I'd like to put some quantity limits in place where we have none but should and, make some of our existing edits more stringent. We'll need to start with our fully funded plans and move to the self-funded afterwards. I'd also like to try this in TennCare and see what the TC Solutions Unit will let us get away with.

I'd like to move quickly on this. What are your recommendations?  
Thanks.

> -----Original Message-----  
> **From:** Conley, Erin (STL) [SMTP:EConley@express-scripts.com]  
> **Sent:** Monday, April 15, 2002 12:41 PM  
> **To:** [REDACTED]  
> **Cc:** Zopfi, Arnie (BLM); Orvis, Traci (BLM)  
> **Subject:** FW: Emerging Therapeutic Issues - AWP PRICE INCREASES  
>  
> > Hello -  
> >  
> > Please see attached notification regarding recent increases in AWP,  
> > greater than anticipated. Please distribute as appropriate to  
> interested  
> > parties in your organization.  
> >  
> > Thank you,  
> > Erin  
> >  
> > <<AWP increase notification.doc>>  
> >  
> >  
> > Erin L. Conley, Pharm.D.  
> > Clinical Program Manager  
> > Managed Care Division  
> > phone. 314-919-4628  
> > fax. 314-919-4664  
> > econley@express-scripts.com  
> > << File: AWP increase notification.doc >>  
>

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# **Exhibit 25**

RAYMOND S. HARTMAN  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

 ORIGINAL

-----X

NEW ENGLAND CARPENTERS HEALTH  
BENEFITS FUND, ET AL.,  
Plaintiffs

Civil Action

vs.

No. 1:05-CV-11148-PBS

FIRST DATABANK, INC., and  
McKESSON CORPORATION,  
Defendants

-----X

DEPOSITION OF RAYMOND S. HARTMAN, a  
witness called by and on behalf of the  
Defendant McKesson Corporation, taken pursuant  
Federal Rules of Civil Procedure, before  
Nicole E. Guilbert, a Notary Public in and for  
the Commonwealth of Massachusetts, at Bonner,  
Kiernan, Trebach & Crociata, on Wednesday,  
October 4, 2006, commencing at 9:46 a.m.

VOLUME I

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2 of the manufacturers whose drugs are listed in Appendix A  
3 knew about the 5 percent change when it occurred or just  
4 some of them; am I correct?

5 A. That's correct.

6 Q. And again, you don't need to know that for  
7 purposes of any opinion you're rendering here, correct?

8 A. For the opinions I'm rendering here, that's  
9 correct.

10 Q. Now, let's take third-party payors. Did any of  
11 them know about the change in the 5 percent at the time it  
12 occurred or thereafter?

13 A. I've seen no evidence that any of them knew of the  
14 change.

15 Q. No, not the question whether you've seen any  
16 evidence, but can you tell me what you're assuming for  
17 purposes of rendering your opinion, did some or all  
18 third-party payors become aware of the change in the 5  
19 percent at the time it occurred or thereafter?

20 A. I'm assuming that the third-party payors continued  
21 to get integratable data from First DataBank that included  
22 AWP and WACs. Their primary focus was on AWP and  
23 reimbursement off of AWP for this type of drug. Whether  
24 they then related that to WAC or not, I've made -- I've  
25 made no analysis about that or I've made no assumption



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2 about whether they observed that or not. The AWP -- the  
3 assumption that I have made that flows from the allegations  
4 are that that AWP increased from what WAC was and that's  
5 what they were working off of.

6 Q. Would it be correct for purposes of the opinions  
7 you're rendering here regarding class certification, you  
8 don't need to know whether any third-party payor observed  
9 or knew of this 5 percent change at the time it happened or  
10 shortly thereafter?

11 A. For purposes of my analysis and for the -- the  
12 opinions that I come to and the conclusions regarding  
13 impact and injury, the -- I'm assuming that the allegations  
14 about the spread occurred; that the third-party payors were  
15 sufficiently locked into contracts or sufficiently locked  
16 into ways of doing business that they -- that they worked  
17 off of an AWP; and that knowledge -- I don't know whether  
18 they knew or if they didn't know, but it would not change  
19 my opinions of whether they did or not.

20 Q. So would it be correct that whether or not  
21 third-party payors knew, observed or knew of this 5 percent  
22 change in the spread at the time it happened or shortly  
23 thereafter, would not make a difference to you in -- for  
24 purposes of any opinion you're rendering here; am I  
25 correct?

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2 A. If -- let's say the following: If all third-party  
3 payors were made aware of this scheme at the time that it  
4 happened and it was made clear to them that what they were  
5 paying the -- the reimbursements that they were paying  
6 increased to the extent that they did, as indicated by my  
7 calculations, such that there were an announcement that  
8 everybody knew, that could change the assumptions about --  
9 about -- of -- about -- that would change my opinions or  
10 could change my opinions here.

11 Q. Is it correct it doesn't make a difference to you  
12 whether third-party payors knew or didn't know about the 5  
13 percent change?

14 A. What I'm saying --

15 MR. SOBOL: Objection; asked and  
16 answered.

17 THE WITNESS: What I'm saying is that  
18 what -- the knowledge that they had over  
19 this period of time was insufficient to --  
20 to lead to any change in what -- what I've  
21 -- my conclusions in this report.

22 THE VIDEOGRAPHER: Here ends Tape 1.  
23 Off the record 11:06 a.m.

24 (A brief recess was taken.)

25 THE VIDEOGRAPHER: Here begins Tape

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2 2. Back on the record 11:17 a.m.

3 Q. (By Mr. Goldman) Dr. Hartman, if I wanted to know  
4 whether any third-party payor observed or was told about  
5 the 5 percent change after it occurred, would there be a  
6 way for me to find out?

7 A. If one wanted to ascertain whether a third-party  
8 payor had known of that, was aware of it as soon as it  
9 occurred --

10 Q. Or shortly thereafter.

11 A. -- or thereafter, one could design a survey to try  
12 and ascertain that.

13 Q. What if I wanted to know if any of the plaintiffs  
14 were told or aware or observed this change, is there a way  
15 I could find out from them?

16 A. Well, certainly asking them would be a fairly  
17 direct way of finding that out.

18 Q. Did you think of doing that here?

19 A. For the purposes of this analysis, I've -- I've  
20 been asked to assume what I've been asked to assume, and  
21 I've -- I've been asked to rely on what I know of how  
22 reimbursement works and how I've observed that over time  
23 among third-party payors, and so it wasn't an issue that  
24 I've been asked to do here in this -- as part of this  
25 analysis.

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2 Q. So do you know whether any plaintiff in this case  
3 knew or was told or became aware of the 5 percent change in  
4 spread after it occurred or thereafter?

5 A. I have not been asked to focus on that -- on  
6 that -- on that issue.

7 Q. And again, it wouldn't make a difference to you,  
8 would it, in terms of any opinion you're rendering here?

9 A. Well, factually, whether third-party payors knew  
10 or whether they all knew, whether some of them knew,  
11 whether none of them knew is hypothetical to what I've --  
12 the opinion I'm rendering here. Based on the facts of what  
13 I know of this industry, most of them were unaware of this,  
14 that the -- that they all knew or many of them knew run  
15 counter to -- and by "know," I mean institutionally make an  
16 observation of this and then say: Look, we've observed  
17 this is going on. We've got to renegotiate our contracts.  
18 We've have to take a position we're going to respond to  
19 this because of this effect.

20 And based -- so right now we're speaking very  
21 hypothetically of know or not know or -- and what that  
22 means, but based on the facts of the industry, as I know  
23 them, it's -- it -- I would venture that very few would  
24 respond institutionally -- understood enough to respond  
25 institutionally to this -- to the allegations in this

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2 matter.

3 Q. Let me -- do you assume, for purposes of the  
4 opinion you're giving, that most third-party payors were  
5 unaware of the 5 percent change?

6 A. I'm assuming that per my understanding of this --  
7 of this industry, that this was a change that -- that was  
8 effectuated in a stealthy a manner as was possible; and  
9 that once -- once it was observed, if it were observed,  
10 that there were contracts in place with various players  
11 that changes could not occur on the part of third-party  
12 payors to an observed change in the spread.

13 Q. Do you assume that most third-party payors were  
14 unaware of the 5 percent change?

15 A. I'm aware of just what I've said.

16 Q. I know, but with all due respect, I don't believe  
17 I've gotten an answer. Do you assume that most third-party  
18 payors were unaware of the 5 percent change?

19 A. I'm assuming that most third-party payors  
20 institutionally could not respond in a way that had any  
21 meaning to the 5 percent spread.

22 Q. I'm not asking you about the response. That's  
23 separately. I want to know do you assume that most  
24 third-party payors were unaware of the 5 percent change?

25 A. Given the earlier answer, that question is not

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2 relevant and I haven't addressed it.

3 Q. So would it be correct you make no assumption as  
4 to whether some, all, or most third-party payors were aware  
5 of the 5 percent change for purposes of any opinion you're  
6 giving here?

7 MR. SOBOL: Objection; asked and  
8 answered.

9 THE WITNESS: I'm assuming that the  
10 third-party payors are aware of these types  
11 of issues in the ways that I've seen in  
12 dep -- in enumerable depositions; that  
13 there is a general lack of awareness of  
14 these kinds of issues on the part of  
15 third-party payors. And so the -- I'm  
16 taking -- I'm assuming that the third-party  
17 payors behave and know as they -- as they  
18 have behaved and known historically, and  
19 that's what I assume.

20 Q. (By Mr. Goldman) I'm afraid I just don't  
21 understand and I need to understand this. So very -- I  
22 understand there's an issue for you about if they knew,  
23 could they respond, and I want to put that aside. I wanted  
24 to know do you make an assumption as to whether most  
25 third-party payors were unaware of the 5 percent change?

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2 A. I -- I make the assumption -- it's this issue of  
3 "most" --

4 Q. I'm just using -- I'm quoting you.

5 A. Right. You are?

6 Q. Yes, I am. You said, "Most were unaware, very few  
7 were aware." That's what I have in my notes.

8 MR. SOBOL: Objection to the form.

9 Q. (By Mr. Goldman) And I don't want you to be bound  
10 by that. My question simply is: Do you assume that most  
11 third-party payors were unaware of the 5 percent change?

12 A. I -- I assume that many third-party payors were  
13 unaware of the third -- of the change based on what I've  
14 seen of awareness of third-party payors, period.

15 Q. Okay. Now, if you recently read Judge Saris's  
16 opinion, you see she refers to a potential of 11,000 of  
17 third-party payors being in the MDL class. There are a lot  
18 of third-party payors out there?

19 A. There are.

20 Q. Would you be able to tell me, when you say, "many  
21 were unaware," what percentage of the total of third-party  
22 payors you include as in the group who were unaware for  
23 purposes of your assumption? Is it 50 percent? 75  
24 percent? What -- what constitutes "many"?

25 A. I would -- I'm -- I'm speculating here. The --

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2 MR. SOBOL: Motion to strike.

3 Q. (By Mr. Goldman) You don't know?

4 A. Well, I -- I'm -- I have opinions but it's -- it's  
5 the -- but it -- based -- I would say the preponderance of  
6 third-party payors did not have an understanding of this --  
7 of this change and this markup based on the types of  
8 deposition testimony I've seen, but this is a -- that's  
9 merely a guess.

10 Q. Okay. I want to stay away from understanding of  
11 it, but I want to stay with aware of the 5 percent change  
12 in the spread. Is there a difference in your terminology  
13 of "many" as opposed to "preponderance"?

14 MR. SOBOL: Objection.

15 THE WITNESS: Yeah. Many is -- you  
16 know, many is, you know, could be 50/50. I  
17 would say --

18 Q. (By Mr. Goldman) Over 50 percent?

19 A. I -- yes.

20 Q. Over 60 percent?

21 A. I don't know.

22 MR. SOBOL: Objection to the form.

23 MR. GOLDMAN: We got the answer.

24 Q. (By Mr. Goldman) Now, was -- there was an effort  
25 to you -- you assume, to hide, and my question is: Was



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2 that -- do you assume that effort was successful throughout  
3 the entire class period; that is, from the time the 5  
4 percent was implemented and hidden, it remained hidden from  
5 whoever it was being hidden from consistently over a  
6 four-year -- four-plus-year period of time or did it -- do  
7 you assume it leaked out to some people?

8 MR. SOBOL: Objection to the form.

9 Q. (By Mr. Goldman) What's your assumption?

10 A. My assumption is the following, and why don't we  
11 just, you know, get this on the record, because you keep  
12 coming back to it over and over again from different  
13 directions: The -- the scheme was entered into as alleged,  
14 I'm assuming, in August of 2001; and it didn't affect all  
15 drugs at once, so people couldn't have suddenly said, oh,  
16 my God, all these drugs are going up, what's going on? It  
17 happened incrementally; as drug prices were being renewed,  
18 there would be an increase.

19 Now, as third-party payors and as the people who  
20 get the AWP and the WAC data, they will get it, they will  
21 -- reimbursements will be paid based on AWP. That's the  
22 major thing that they look at. As far as I see with  
23 reimbursement, negotiations -- the preponderance of  
24 negotiations are off of AWP. So when -- when third-party  
25 payors get AWP's, they can get WACs if they want to. It is

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2 not my understanding -- I've seen no evidence that there  
3 are people -- third-party payors -- within third-party  
4 payor claim department that are looking at WAC/AWP spreads  
5 and saying -- and monitoring this like a radar screen and  
6 that they're locked onto it.

7 So this is something that's slowly diffused  
8 through the system over the NDCs as they show up in my  
9 Figure 1, and the important thing to these third-party  
10 payors was AWP. Now, they could get WAC if they wanted to.  
11 So anybody could know if they got the data. The question  
12 is: Did it interest them, was it their job to go out and  
13 follow this and then report to somebody to say, hey, look  
14 what's going on here. We've got to do something about  
15 this.

16 And what I'm saying is that given the fact that  
17 they did this at a time when price changes normally came  
18 about, it was not something that they said: On January 1,  
19 2002, we're raising all of these prices. That would have  
20 drawn attention to the third-party payors. So it was done  
21 incrementally. It was done stealthily. Anybody -- you  
22 know, question of knowing, anybody could go out and get  
23 that data, but were people looking at that? The  
24 preponderance of people were not looking at that, is my  
25 understanding as I understand the way reimbursement is done

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2 here, and that -- that some people may have started to  
3 understand this, but institutionally they were locked into  
4 contracts that were determined to be P less whatever and  
5 rebates.

6 And so there was an inertia of any kind of --  
7 there was an inertia in an understanding. There was an  
8 inertia in a response. And all these different, you know,  
9 do they know this, do they know that, how many, blah, blah,  
10 blah, that's what characterizes all my understanding of all  
11 of the third-party payors.

12 Q. So would it be fair to say from what you said that  
13 over the class period, that there were more and more people  
14 learning about the 5 percent increase in the spread?

15 MR. SOBOL: Objection.

16 THE WITNESS: I don't know.

17 MR. SOBOL: Motion --

18 Q. (By Mr. Goldman) You don't know?

19 MR. SOBOL: Objection.

20 THE WITNESS: I --

21 MR. SOBOL: Wait a second, Ray.

22 Objection. This has been asked and  
23 answered repeatedly for the past 15  
24 minutes, and it's also beyond the scope of  
25 what he's -- he has said he is asked in his

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2 based on the spread -- on the spread that was not  
3 understood by them.

4 Q. So I now have the foundation for the questions I  
5 want to ask. Tell me economically why is it if the  
6 third-party payors had been aware of ASP, what the ASP was  
7 and, therefore, the spread between the ASP and these  
8 artificially high AWP's, that would have not continued; that  
9 spread would not have -- have existed or continued in the  
10 marketplace? What is the economic principle behind that?

11 A. That that spread would --

12 MR. SOBOL: I'm sorry. I'm sorry.

13 Objection.

14 Q. (By Mr. Goldman) Yeah. The spread between the  
15 ASP and the -- these inflated AWP's, if it had been known to  
16 the third-party payors, what would they have done?

17 A. Well, I think Dr. Berndt -- I mean let's focus on  
18 those drugs that -- for which greater attention was -- was  
19 focussed on this issue and what Dr. Berndt has said in  
20 various places in his report is that there was -- when the  
21 spreads were unknown, when it was not clear what was going  
22 on, that there were possibilities for, I think he said,  
23 mischief and abuse; and that third-party payors, when they  
24 were made aware -- and these were large third-party payors  
25 -- were made aware of the size of this spread, they were

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2 flabbergasted. They were reimbursing off of an AWP that  
3 was so far above the acquisition costs of the doctor -- of  
4 the physicians, they were flabbergasted.

5 Judge Saris referred to these as "the mega  
6 spreads." Now, if I'm a third-party payor and doctors are  
7 coming to me and saying, well, look, I want to be  
8 reimbursed at AWP less 15 and I know that the doctors are  
9 getting this at what is 75 percent below that, so that  
10 would be a spread of three or four hundred percent on the  
11 ASP, they would have said, I'm not -- you know, I'm not  
12 going to pay you AWP less 15. I'm going to negotiate more  
13 aggressively.

14 Q. And that would have been what would have likely  
15 happened if the third-party payors were aware of what ASP  
16 actually was, correct?

17 A. If the third-party payors -- again, we have to --  
18 you know, we keep talking a little bit about this is  
19 hypothetical in Chicago school, you know, if they knew  
20 about this bid of excess fees, you know, there's going to  
21 be heat-seeking missiles that go and compete them away. I  
22 think we have to also keep in mind what Dr. Berndt put very  
23 well of the importance of being unimportant; that the drug  
24 spending generally has been one of the smallest elements of  
25 third-party payor reimbursement. So they haven't had swat

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2 teams focussing on those kinds of fees in trying to manage  
3 them closely. It's been on hospitals, physicians, other  
4 kinds of things.

5 But suppose we're in a state of the world where  
6 all that other stuff has been worked out by the third-party  
7 payors and they started to know about this information,  
8 which does not seem to be the case, as Dr. Berndt suggests  
9 over the period of the nineties, over much of the MDL  
10 period. They would use that information to try and  
11 negotiate aggressively if they -- if they had known about  
12 that.

13 Q. Okay. "If they had known about that" meaning  
14 about what ASP actually was?

15 A. That's correct.

16 Q. So they were missing one of the pieces to know  
17 what the spread was; they were missing what the ASP was,  
18 correct? They knew what the AWP was. They didn't know  
19 what the ASP was, correct?

20 A. That's correct.

21 Q. And I want to see if you'll agree with me, in our  
22 case, unlike what you found there, the spread that we're  
23 talking about here, as you point out in the footnote, AWP  
24 and WAC, the market -- people in the marketplace can learn  
25 both pieces of the equation to know the spread?

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2 A. The -- they can. The WAC and the AWP is available  
3 from the electronic databases.

4 Q. Now, do you know whether there were steps  
5 manufacturers could have taken, if they wanted to, in the  
6 face of learning about the 5 percent change in spread?

7 MR. SOBOL: Mel, do you mean  
8 manufacturers or TPPs?

9 MR. GOLDMAN: No. I'm sorry. I'm  
10 off -- I left TPP. I'm now going back to  
11 the manufacturers --

12 MR. SOBOL: Okay.

13 MR. GOLDMAN: -- some of whom, as you  
14 pointed out, the complaint says were aware  
15 of this, complained about it.

16 Q. (By Mr. Goldman) And I'm asking were there things  
17 manufacturers could have done upon learning of the 5  
18 percent change to -- in an attempt to change that, if they  
19 had wanted to?

20 A. Well, I cite, as I know you know, I cite one of an  
21 unnamed manufacturer that objected to the new markup and  
22 said that they -- there was something that wanted to be --  
23 this is in Footnote 12 and it quotes -- it cites a  
24 manufacturer in 2003 that said they wouldn't -- they didn't  
25 want to report the AWP's, given the fact that the spread had

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2 haven't looked at this because it was not  
3 relevant to what I was asked to do, given  
4 what I was asked to assume, so I can't --  
5 you know, what I --

6 Q. (By Mr. Goldman) I'm moving on.

7 A. I'd look where I would have to look.

8 Q. I'm moving on.

9 A. Okay.

10 Q. So can you tell me among these contracts, that is  
11 all the contracts that were, as I say, legally extant, that  
12 existed during the class period, what the typical  
13 termination provision is in those contracts or is there a  
14 typical termination period?

15 A. Asked and answered.

16 Q. You don't know?

17 A. I didn't look at that. It was not relevant to  
18 what I was asked to do.

19 Q. So as far as being locked into a contract as a  
20 part -- as opposed to not being able to understand or deal  
21 with or -- with what was happening, I'm talking about being  
22 locked into a contract that you can't get out of, wouldn't  
23 it make a difference to you whether or not the contract was  
24 terminable?

25 A. If I had seen evidence of any type of response



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2 that would suggest to me that -- that that was necessary, I  
3 -- that would be something that would -- would -- I would  
4 -- I could look at if -- when I got to the stage of  
5 liability or where that would arise in the analysis. For  
6 purposes of this analysis, what I've been asked to assume  
7 is that there was -- there was this scheme, the third-party  
8 payors were not able to respond to this scheme, and that  
9 comported with -- I found no evidence that contradicted  
10 that set of assumptions. And I certainly didn't -- I just  
11 saw no evidence that third-party payors were responding in  
12 a way either with contract renewals or with some kind of  
13 renegotiation at all, period.

14 Q. Would it be correct, you don't need to know what  
15 the nature of the termination provisions of any are in  
16 these contracts in order to render the opinions you're  
17 giving here?

18 A. Given what I've been asked to assume, that is  
19 not -- I do not need to look at that.

20 Q. All right. Do you know whether there -- these  
21 contracts are amendable?

22 A. I would -- no. I -- all contracts, I would  
23 assume, have some ability to amend but I've not --

24 Q. Again, whether or not they were amendable or  
25 whether they were amended during the class period would not

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2 THE WITNESS: I've seen no evidence  
3 of -- in this particular case of this  
4 particular set of allegations that it did.

5 Q. (By Mr. Goldman) Have you asked -- have you asked  
6 counsel to provide you with discovery or any information on  
7 this subject?

8 A. At this point, nothing more than what I've  
9 received with the -- with the complaint.

10 Q. Have you gone out to look at it to see what the  
11 answer to my question would be?

12 A. I will assume that it -- at the stage of  
13 liability, if I'm asked to do it, that's when I would do  
14 that.

15 Q. How did you treat copays in your -- in your  
16 formulaic methodology for computing aggregate damages?

17 A. I -- I looked only at ingredient costs and the  
18 plan was to look at ingredient costs.

19 Q. Why didn't you take into account copays?

20 A. Because I was -- because the copays, for the most  
21 part, are unrelated to the effects of the scheme.

22 Q. How do you know that they're unrelated?

23 A. Because everything I've seen tells me that the --  
24 for this set of drugs, copays are flat for the  
25 self-administered branded drugs.

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2 Q. Tell me everything upon which you base the  
3 statement that, for the most part, copays are flat.

4 A. Every --

5 MR. SOBOL: Objection to the form.

6 THE WITNESS: Every case and every --  
7 we're not talking about  
8 physician-administered drugs here?

9 Q. (By Mr. Goldman) No. We're talking about  
10 self-administered.

11 A. Self-administered drugs. I have seen nothing that  
12 I recall that shows me -- that tells me in -- for private  
13 sector third-party payors that copays are coinsurance, that  
14 they vary with the AWP --

15 Q. Okay. I want you to assume they are flat for the  
16 moment. If they are flat, why shouldn't they be taken into  
17 account in your formulaic methodology?

18 MR. SOBOL: Objection to the form.


19 THE WITNESS: Well, if I take -- in  
20 the same way that I've been asked to assume  
21 and seen nothing to the contrary that the  
22 reimbursement is determined by the allowed  
23 amount, which is an allowed amount for the  
24 ingredient cost, and then there's a  
25 dispensing fee and then there's a copay

1 RAYMOND S. HARTMAN  
2 COMMONWEALTH OF MASSACHUSETTS MIDDLESEX, SS.  
3  
4

5 I, NICOLE E. GUILBERT, a Certified  
6 Shorthand Reporter and Notary Public duly  
7 commissioned and qualified in and for the  
8 Commonwealth of Massachusetts, do hereby  
9 certify that there came before me on the 4th  
10 day of October, 2006, at 9:46 a.m., the person  
11 hereinbefore named, RAYMOND S. HARTMAN, who  
12 provided satisfactory evidence of  
13 identification as prescribed by Executive  
14 Order 455 (03-13) issued by the Governor of  
15 the Commonwealth of Massachusetts, was by me  
16 duly sworn to testify to the truth and nothing  
17 but the truth of his knowledge concerning the  
18 matters in controversy in this cause; that he  
19 was thereupon examined upon his oath, and his  
20 examination reduced to typewriting under my  
21 direction; and that this is a true record of  
22 the testimony given by the witness to the best  
23 of my ability.

24 I further certify that I am neither  
25 attorney or counsel for, nor related to or  
employed by, any of the parties to the action  
in which this deposition is taken, and  
further, that I am not a relative or employee  
of any attorney or counsel employed by the  
parties hereto or financially interested in  
the action.

My Commission Expires: May 7, 2010

  
Nicole E. Guilbert  
CSR/Notary Public

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 C.A. No.: 1:05-CV-11148-PES

4 Volume II

5 Pages 279 to 397

6 Exhibits: (See Index)

 ORIGINAL

7 -----  
8 NEW ENGLAND CARPENTERS HEALTH )  
9 BENEFITS FUND, PIRELLI ARMSTRONG )  
10 RETIREE MEDICAL BENEFITS TRUST; )  
11 TEAMSTERS HEALTH & WELFARE FUND OF )  
12 PHILADELPHIA AND VICINITY; and )  
13 PHILADELPHIA FEDERATION OF )  
14 TEACHERS HEALTH AND WELFARE FUND, )  
15 Plaintiffs, )  
16 )

17 -vs- )  
18 )

19 FIRST DATABANK, INC., a MISSOURI )  
20 CORPORATION, a Delaware Corporation. )  
21 Defendants. )  
22 -----

23 \* \* \* \* \*

24 DEPOSITION of DR. RAYMOND S. HARTMAN, called  
25 as a witness by and on behalf of the Defendants,  
pursuant to the applicable provisions of the  
Massachusetts Rules of Civil Procedure, before  
Lisa L. Gross, Registered Professional Reporter and  
Notary Public in and for the Commonwealth of  
Massachusetts, taken at the offices of Bonner,  
Kiernan, Trebach & Crociata, One Liberty Square,  
Boston, Massachusetts, on Thursday, October 5, 2006,  
commencing at 9:38 a.m.

1 DR. RAYMOND S. HARTMAN

2 Q. And the reason that you do that is  
3 because the effect of the five percent is  
4 different -- you don't use five percent  
5 because there's a 15 percent discount that's  
6 not reimbursed, correct?

7 MR. SOBOL: Objection to the form.

8 Q. You can't say that the five-percent  
9 Scheme effected all of AWP, because the  
10 reimbursement was only for 85 percent of it?

11 MR. SOBOL: Objection the to the  
12 form.

13 Q. Is that right?

14 A. That's one way of stating it.

15 Q. In other words, your math is -- when we  
16 take into account this 15 percent, you are  
17 just -- we have a lot of algebra here "pre"  
18 and "post," but when we take it into the 15  
19 percent, you are just using a five percent  
20 increase in WAC against every NDC as your  
21 calculation?

22 A. Well, that's -- the whole notion of the  
23 Scheme is that AWP increased --

24 Q. Yeah, I understand. But why do we need  
25 all this, this "pre, post" and all of this

1 DR. RAYMOND S. HARTMAN

2 stuff here, isn't it just simply, it's five  
3 percent of WAC because of the 15 percent, it's  
4 4.25?

5 A. I would assume that if I had written it  
6 that way, people would, except for learned  
7 counsel at the table, people would say, how --  
8 where did these calculations come from.

9 Q. Not me, I would say you thought there  
10 was a five percent increase in WAC so you  
11 applied five percent. But that's just me.  
12 That's just me.

13 So let me show you another document.  
14 Let's take a short break. No.

15 (Discussion off the record.)

16 MR. GOLDMAN: We will mark next a  
17 document entitled Declaration of Susan Hayes in  
18 Support of Plaintiffs' Motion for Class  
19 Certifications.

20 (Exhibit 8 marked  
21 for identification.)

22 Q. Showing you Exhibit No. 8, Dr. Hartman,  
23 and ask you whether you've seen some or all of  
24 that document before today?


25 A. Not that I recall.

## C E R T I F I C A T E

I, Lisa Lee Gross, Registered Professional Reporter and Notary Public duly commissioned and qualified in and for the Commonwealth of Massachusetts, do hereby certify that there came before me on the day 5th of October, the person hereinbefore named, who was by me duly sworn to testify to the truth and nothing but the truth of their knowledge touching and concerning the matters in controversy in this cause; that they were thereupon examined upon their oath, and their examination reduced to typewriting under my direction and that the deposition is a true record of the testimony given by the deponent.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

In Witness Whereof, I have hereunto set my hand and affixed my seal this 9th day of October, 2006.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
January 17, 2011



# **Exhibit 26**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH  
BENEFITS FUND, PIRELLI  
ARMSTRONG RETIREE MEDICAL  
BENEFITS TRUST, TEAMSTERS  
HEALTH & WELFARE FUND OF  
PHILADELPHIA AND VICINITY,  
PHILADELPHIA FEDERATION OF  
TEACHERS HEALTH AND WELFARE  
FUND, and DISTRICT COUNCIL 37  
HEALTH & SECURITY PLAN

Plaintiffs,

- vs -

FIRST DATABANK, INC., a  
Missouri Corporation; and  
McKESSON CORPORATION, a  
Delaware Corporation,

Defendants.

ORIGINAL

Civil Action

No. 1:05-CV-11148-PBS

The videotaped deposition of SUSAN ALLENE HAYES,  
called for examination, taken pursuant to the Federal  
Rules of Civil Procedure of the United States District  
Courts pertaining to the taking of depositions, taken  
before NANCY L. BISTANY, a Notary Public within and for  
the County of Cook, State of Illinois, and a Certified  
Shorthand Reporter of said state, CSR No. 84-1857, at  
200 North Columbus Drive, Chicago, Illinois, on  
October 26, 2006, at 9:29 a.m.

C O N F I D E N T I A L

PURSUANT TO PROTECTIVE ORDER

1 BY MR. GOLDMAN:

2 Q. Sure. You testified in Ohio regarding  
3 rebates and what you'd expect to find in agreements and  
4 understandings of payors and PBMs regarding those terms,  
5 correct?

6 A. Yes.

7 Q. And I'm just wondering if you have in your  
8 library or your database information that goes to what are  
9 the normal provisions or terms in a payor-PBM contract?

10 A. No.

11 Q. You refer in your declaration to having seen  
12 many of them, correct?

13 A. That's correct.

14 Q. Hundreds, correct?

15 A. Correct.

16 Q. Either you or people who work for you have  
17 seen them?

18 A. Correct.

19 Q. And is there anything in your -- in your firm  
20 at POS in your library, your database or anywhere else  
21 which will show what is contained in those hundreds of  
22 contracts you're familiar with?

23 A. No. Our methodology at POS -- I mean, we're  
24 a very small office, a little bit bigger than this room

1 guide, I've never seen something like that.

2 Q. All right. So let me describe a subject, and  
3 that would be reimbursement to pharmacies for the drugs  
4 that they sell, reimbursement by PBMs. And another would  
5 be payment by payors to PBMs for drugs purchased by their  
6 members from retail pharmacies. So I'm talking about  
7 self-administered drugs.

8 Are you aware of any publications that are  
9 authoritative in either of those two areas or both?

10 A. I mean, I think I've seen articles on those.  
11 I don't think there's any, like, ongoing, every month  
12 publication regarding those issues.

13 Q. Do you feel you're an expert on the subject,  
14 the first part of my equation, reimbursement of retail  
15 pharmacies for the drugs they sell by -- reimbursement by  
16 PBMs of retail pharmacies for the drugs they sell?

17 A. I believe I'm expert in that area. I believe  
18 I understand how that works.

19 Q. And what's -- how did you come to have that  
20 understanding, through the audit process?

21 A. Through the audit process as well as, you  
22 know, working for Walgreen's Corporation and knowing, you  
23 know, how retail pharmacies are reimbursed; through,  
24 again, PBM audits, through my understanding of the

1 industry, through talking to PBMs about how they reimburse  
2 retail network pharmacies. ~~On-the-job training~~ I guess  
3 you would say.

4 Q. And the same would be true for how payors  
5 reimbursed PBMs for the drugs that their insureds or  
6 members purchase from retail pharmacies?

7 A. And I think my expertise in that category is  
8 probably greater than the former.

9 Q. It arises out of the audit work you've done?

10 A. Yes.

11 Q. And the litigation support work you've done?

12 A. Yes.

13 Q. Now, is there any article that you've written  
14 or book that you've been a participant in that I could  
15 look at that would be pertinent or relevant to opinions  
16 you're giving in this case?

17 And you have your -- you have a list of the  
18 books and articles. Are there any there that I would look  
19 at that would be informative or relevant to what you're  
20 giving opinions about here?

21 MS. FEGAN: What are you looking for?

22 THE WITNESS: My --

23 MS. FEGAN: Your CV?

24 THE WITNESS: Yes.

1 A. Well, wouldn't First Databank know that?

2 Q. I'm asking you if you have seen any  
3 information?

4 A. No.

12:05PM 5 Q. Have you heard any speeches or received any  
6 information from any other source about the extent to  
7 which payors during the period I'm referring to subscribed  
8 to First Databank data?

9 A. You know, let me just say, it's virtually  
12:23PM 10 unheard of that a plan sponsor would ever go by First  
11 Databank information. It's just not done.

12 It's expensive. They don't have the staff to  
13 do anything with it. They don't have the expertise to  
14 understand it if they had it.

12:35PM 15 So I can't say emphatically that there has  
16 never been a plan sponsor to buy a First Databank. I'm  
17 sure there's somebody out there, but I've never heard  
18 anything written about it. I've never talked to anybody  
19 about it. It's just not done in the industry. I'm an  
12:53PM 20 expert in the industry. It's just not done.

21 Q. Well, I understand you're an expert. I'm  
22 just trying to get the basis for your expert opinion.  
23 Okay.

24 Is there anything more that you based it on

1 was doing, and they would negotiate a better deal.

2 Whether they did or didn't, I have no idea.

3 BY MR. GOLDMAN:

04:03:05PM 4 Q. Yeah, but see, you're an expert. I'm asking  
5 you what you would assume would happen, okay, based upon  
6 your knowledge of the industry. You say you're holding  
7 yourself out as an expert.

8 You told me the second category, the one  
9 that's not pass-through but is based on the spread, is the  
04:03:15PM 10 more prevalent type of arrangement, correct?

11 A. Yes.

12 Q. So assuming that's the arrangement, if the  
13 PBM understood that the retailer was not making more  
14 profit due to this 5 percent, don't you believe they would  
04:03:26PM 15 go in there and negotiate better terms for the PBM in the  
16 face of that?

17 A. That would be a logical assumption. Whether  
18 it happened, I'm not sure, but that -- one would assume  
19 that.

04:03:36PM 20 Q. The PBMs are fairly sophisticated, smart  
21 people, correct?

22 A. Correct.

23 Q. And they're quite interested in profit margin  
24 for themselves; isn't that your opinion?

1 STATE OF ILLINOIS )

2 ) SS:

3 COUNTY OF C O O K )

4  
5 I, NANCY L. BISTANY, a Notary Public within and  
6 for the County of Cook, State of Illinois, and a Certified  
7 Shorthand Reporter of said state, do hereby certify:

8 That previous to the commencement of the  
9 examination of the witness, the witness was duly sworn to  
10 testify the whole truth concerning the matters herein;

11 That the foregoing deposition transcript was  
12 reported stenographically by me, was thereafter reduced to  
13 typewriting under my personal direction and constitutes a  
14 true record of the testimony given and the proceedings  
15 had;

16 That the said deposition was taken before me at  
17 the time and place specified;

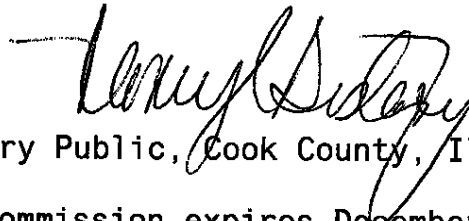
18 That the reading and signing by the witness of  
19 the deposition was agreed upon as stated herein;

20 That the deposition terminated at 5:19 p.m.;

21 That I am not a relative or employee or attorney  
22 or counsel, nor a relative or employee of such attorney or  
23 counsel for any of the parties hereto, nor interested  
24 directly or indirectly in the outcome of this action.



1                   IN WITNESS WHEREOF, I do hereunto set my hand  
2                   and affix my seal of office at Chicago, Illinois, this  
3                   29th day of October, 2006.

4  
5  
6  
7                   

8                   Notary Public, Cook County, Illinois

9                   My Commission expires December 16, 2009.

10                  CSR No. 84-1857.



# **Exhibit 27**

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3 NEW ENGLAND CARPENTERS HEALTH )  
4 BENEFITS FUND, PIRELLI )  
5 ARMSTRONG RETIREE MEDICAL )  
6 BENEFITS TRUST, TEAMSTERS )  
7 HEALTH & WELFARE FUND OF )  
8 PHILADELPHIA AND VICINITY, )  
9 PHILADELPHIA FEDERATION OF )  
10 TEACHERS HEALTH AND WELFARE )  
11 FUND, and DISTRICT COUNCIL 37 )  
12 HEALTH & SECURITY PLAN )

13 Plaintiffs, )

Civil Action

14 -vs- )

No. 1:05-CV-11148-PBS

15 FIRST DATABANK, INC., a )  
16 Missouri Corporation; and )  
17 McKESSON CORPORATION, a )  
18 Delaware Corporation, )

19 Defendants. )

**ORIGINAL**

20 The RULE 30(b)(6) videotaped deposition of HEWITT  
21 ASSOCIATES LLC through MATTHEW A. GIBBS, called for  
22 examination, taken pursuant to the Federal Rules of Civil  
23 Procedure of the United States District Courts pertaining  
24 to the taking of depositions, taken before NANCY L.  
BISTANY, a Notary Public within and for the County of  
Cook, State of Illinois, and a Certified Shorthand  
Reporter of said state, CSR No. 84-1857, at 200 North  
Columbus Drive, Chicago, Illinois, on October 27, 2006, at  
9:27 a.m.

C O N F I D E N T I A L  
PURSUANT TO PROTECTIVE ORDER

1 actually have a scorecard when you're doing the  
2 competitive bid process to rate one bidder over another,  
3 am I correct?

4 A. That's correct.

5 Q. And Hewitt developed its own scorecard, am I  
6 correct, for that purpose?

7 A. We have a template that we review with the  
8 client and adjust the weightings according to their  
9 specifications.

10 Q. Why is it that utilization management is more  
11 important than forecast cost?

12 MS. CONNOLLY: Objection to form.

13 BY MR. GOLDMAN:

14 Q. I mean, I would think cost would be number  
15 one, and I'm wondering why it isn't?

16 A. Well -- keep going?

17 Q. Yes.

18 A. My opinion as a -- as, I guess, a clinician  
19 here, is that if all you look at is the up-front cost of a  
20 drug, who cares if you're dispensing the most expensive  
21 one at the end of the day? What matters is are you  
22 dispensing the most affordable drug?

23 The discounts become less important. If you  
24 have a great discount, and you dispense the most expensive

1 drug, that really only gets -- doesn't get you much if  
2 there were more affordable alternatives that should have  
3 been dispensed in the long run.

4 Q. So on your scorecard or your template  
5 scorecard, would you actually give a score to the forecast  
6 cost?

7 A. We would assign a weighting, yes.

8 Q. And the same thing for the utilization  
9 management?

10 A. Based on the responses, yes, that are  
11 provided.

12 Q. Under your current template, what is the  
13 ratio difference -- the ratio between scoring -- what is  
14 the highest score you can get on forecast costs and the  
15 highest score you can get on -- is there a way to weight  
16 these two that way through your scorecard?

17 A. Absolutely. So each -- again, it's a  
18 template, and you've got these various buckets. And based  
19 on where the client is in terms of maybe they don't want  
20 to do utilization management, which does occur --  
21 financials is obviously going to weigh heavier -- we can  
22 adjust those based on whatever the client's independent  
23 strategy is going to be.

24 Q. Okay. Now, I want to focus on forecasting

1 STATE OF ILLINOIS )

2 ) SS:

3 COUNTY OF C O O K )

4  
5 I, NANCY L. BISTANY, a Notary Public within and  
6 for the County of Cook, State of Illinois, and a Certified  
7 Shorthand Reporter of said state, do hereby certify:

8 That previous to the commencement of the  
9 examination of the witness, the witness was duly sworn to  
10 testify the whole truth concerning the matters herein;

11 That the foregoing deposition transcript was  
12 reported stenographically by me, was thereafter reduced to  
13 typewriting under my personal direction and constitutes a  
14 true record of the testimony given and the proceedings  
15 had;

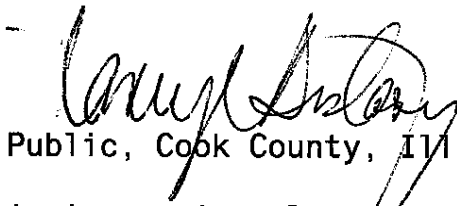
16 That the said deposition was taken before me at  
17 the time and place specified;

18 That the reading and signing by the witness of  
19 the deposition was agreed upon as stated herein;

20 That the deposition terminated at 2:00 p.m.;

21 That I am not a relative or employee or attorney  
22 or counsel, nor a relative or employee of such attorney or  
23 counsel for any of the parties hereto, nor interested  
24 directly or indirectly in the outcome of this action.

1                   IN WITNESS WHEREOF, I do hereunto set my hand  
2                   and affix my seal of office at Chicago, Illinois, this  
3                   31st day of October, 2006.

4  
5  
6  
7                     
8                   Notary Public, Cook County, Illinois  
9                   My Commission expires December 16, 2009.  
10                  CSR No. 84-1857.



# **Exhibit 28**



**From:** Fair, Rick [OMP]  
**Sent:** Thursday, May 09, 2002 5:47 AM  
**To:** Larkin, Cristina [OMP]; Borgia, Mike [HCS]  
**Cc:** Peterson, Mark [OMP]; Insearra, Robert [OMP]; Dugan, Patrick [OMP]; Quiñbayo, Yancy [OMP]; Russell, Dale [OMP]; Moreland, Jennifer [HCS]  
**Subject:** FW: AWP

Cristina & Mike,

Given that our [REDACTED] this will have potentially large impact on [REDACTED] and Medicaid Best Price. Can we take the position with [REDACTED] that we will pay rebates as a % of our recommended wholesale price in lieu of First Databank's AWP? If not, we will need to assess the potential financial exposure and then get together to determine our options and action steps.

Let me know.

Rick

---

Rick Fair  
 Director, National Accounts  
 Ortho-McNeil Pharmaceutical, Inc.  
 Phone: (908) 218-6217  
 Fax: (908) 218-7017

-----Original Message-----

**From:** Fair, Rick [OMP]  
**Sent:** Thursday, May 09, 2002 6:44 AM  
**To:** Iannucci, Art [OMP]; Peterson, Mark [OMP]; Wright, Marla [OMP]  
**Cc:** Russell, Dale [OMP]; Valcarcel, Luis [OMP]; Gribbin, Tim [OMP]  
**Subject:** AWP

Team,

You should be aware of a recent development that will affect our customers. By way of background, First Databank is the company that tracks NDCs and pharma pricing information and publishes it to the industries (PBMs, managed care, retail, and pharma manufacturers). They do this via survey of wholesalers. Traditionally, wholesalers have used our recommended wholesale price, which is 20% higher than our WAC (or DLP in J&J parlance) for all OMP products except those acquired from Alza (we inherited those with a recommended 25% mark-up). Some other manufacturers have priced their products at 25% higher than WAC, benefiting the retailer who gets paid on AWP.

Recently, a couple of the major wholesalers have begun moving our products to 25% mark-ups, and First Databank's survey has picked this up. Many of our prices are now being published with a 25% markup. This will look like a price increase to our customers, even though OMP has taken no overt action. I would ask that you have the team keep an ear out with their customers and provide any information regarding any managed care response to us. We heard Joe Sinopoli from Harvard Pilgrim mention this at the ORTHO EVRA launch, and he indicated they are in the process of renegotiating their retail contracts because of this, potentially to a WAC+% agreement in lieu of AWP-%. We clearly don't want to draw attention to higher pricing, but if it comes up, our customers should know that this is not an OMP pricing action.

Let me know if you have questions.

Rick

---

Rick Fair  
 Director, National Accounts  
 Ortho-McNeil Pharmaceutical, Inc.  
 Phone: (908) 218-6217  
 Fax: (908) 218-7017

# **Exhibit 29**

**Kanwal MD, Neeraj**


---

**From:** Chen, Michael Z. (STL) [MZChen@express-scripts.com]  
**Sent:** Tuesday, February 27, 2007 2:42 PM  
**To:** Kanwal MD, Neeraj  
**Subject:** RE: First DataBank Litigation

Hey Dr Kanwal

I think when you take the utilization of the 8500 drugs and the 4% and spread it across the entire DIV it amount to we gave you 1.5% relief across all your medications not just the 4% of the targeted brands. Thats why the impact in 02 was only .7-.9% I asked about the impact of the 8500 drugs. Our internal teams are aware that you want this. My problem is that I dont know whats in that bucket yet. I am trying to come up with some kind of estimate for you but I am at a loss. Thats why you dont have this data yet.

I have to come to paramount at the end of March. Let me see what Jennifer's schedule is. If I can squeeze the meeting in earlier I will do a conference call.

I will work on this today.

Mike

---

**From:** Kanwal MD, Neeraj [mailto:Neeraj.KanwalMD@ProMedica.org]  
**Sent:** Tuesday, February 27, 2007 1:29 PM  
**To:** Chen, Michael Z. (STL)  
**Subject:** RE: First DataBank Litigation

My advice is that I wouldn't pass that stuff around your office, it will be misinterpreted, it was for your info only so you can see what I read about.

The bottom line is that you folks want us to pay the same or more while listed prices are going down. I understand your points about our discounts, but it wasn't 4%. Where is the other 2.5%?. I will await your company "sell." Are you and Jennifer scheduling a call or coming to Toledo?

---

**From:** Chen, Michael Z. (STL) [mailto:MZChen@express-scripts.com]  
**Sent:** Tuesday, February 27, 2007 2:24 PM  
**To:** Kanwal MD, Neeraj  
**Subject:** RE: First DataBank Litigation

Hi Dr Kanwal

Thanks for the info. I will pass it on. It kind of explains why everyone is so hot about this topic but doesnt actually Hartman doesnt really go into detail on the 15% discount rate or why it exists in the first place. The fact is that AWP is not a credible reference and that PBMs negotiate a discounted rate based on market supply and demand is not a part of his paper.

He assumes that if the AWP is adjusted that all things remain equal in his calculation. Thats a problem for us for the reasons we discussed before. In 02 the industry put in a price shock, as a result we had to go out and recontract with pharmacies to get the money back to you....that is the basis of the analysis I sent you a while back. In 04 we got you rate relief in the amount of about 1.5% That was well above the .7-.9% impact we forecasted back then of the 4% increase.

PROMEDICA/NEC 00006

4/17/2007

Ordering the previous analysis was risky to me. (nobody else took this approach) I was not sure if the data I got was going to make matters worse but I put my faith in the PBM business model and rolled the dice. Fortunately, it turned out that we did reduce the impact to Paramount in Q4, most likely by squeezing the pharmacies out of the margin they previously benefitted from and moving some money around too. That's why the pharmacies are refusing to accept the adjustment today.

To me, the crux of this argument revolves around whether you think pharmacy pricing is an efficient market. Without PBMs it surely wouldn't be. But with PBMs I think there is enough efficiency to address the above issues (albeit not real time like the stock market) I don't think adding another price shock is the answer to this issue.

Lets see what the AWP guys (internally) think of this.

Thanks  
Mike

---

**From:** Kanwal MD, Neeraj [mailto:Neeraj.KanwalMD@ProMedica.org]  
**Sent:** Tuesday, February 27, 2007 11:52 AM  
**To:** Chen, Michael Z. (STL)  
**Subject:** FW: First DataBank Litigation

This is for your info, incase your people haven't been sharing some of the info regarding the proposed awp settlement. This touches on the expected savings, pushback and one person's belief on outcome. I have other documents from the settlement, and can share them for your interest. The expectation remains that pricing will fall from first data bank and all FDB based pricing will fall.

We will see how effective your contracts are in dealing with the pushback from pharmacies who will naturally resist a price reduction. Did you set up a date with Jennifer to come to Toledo?

---

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---

\*\*\*\*\* Confidentiality Notice \*\*\*\*\*

4/17/2007

PROMEDICA/NEC 00007

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If you have received this information in error, please notify the sender immediately by replying to this message and delete the message from your system.